

Russian procurement disputes with state-owned companies are arbitrable (Russian Supreme Court)

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In *Case # 305-##17-7240*, the Russian Supreme Court held that procurement disputes involving state-owned entities are arbitrable.

The Russian Supreme Court has held that procurement disputes involving state-owned entities are arbitrable.

Recent amendments to Russian arbitration law introduced provisions stipulating that disputes arising out of public procurement contracts concluded with state bodies (that is, contracts aimed at ensuring state and municipal needs) are not arbitrable. Although there is no such limitation on procurements made by legal entities (even state-owned ones), Russian state courts have often held that such disputes are also not arbitrable referring to their public nature.

For instance, in September 2017, the Commercial Court of the Moscow Circuit denied recognition of arbitration awards issued in procurement disputes concluded with state-owned companies (see cases *N A40-79416/2017*, *A40-28167/2017*, *A40-22641/17*).

By contrast, during the same period, several court judgments issued by the commercial courts of Bashkortostan (cases *NA07-2132/2017*, *A07-2008/2017*) and Krasnoyarsk Regions (case *NA33-9884/2017*) enforced arbitration awards issued in procurement disputes involving state-owned legal entities.

In this procurement case, the lower courts had enforced an award issued against a company whose 100% shareholder is the City of Moscow.

To clarify the ambiguity in caselaw, the Supreme Court decided to consider the correctness of lower court's approach. In doing so, the Supreme Court filed a request with the Russian Constitutional Court that it confirm whether disputes arising out of procurement contracts concluded with state-owned companies are arbitrable under Russian law. However, the Constitutional Court ruled that uniformity of court practice falls under the jurisdiction of the Supreme Court and therefore, refused to consider the request.

Finally, the Supreme Court carefully analysed whether the legislator had intended to limit the arbitrability of procurement disputes involving state-owned entities and came to the conclusion that such disputes are arbitrable.

The Supreme Court's position is in line with the widely accepted approach that limitation of arbitrability should be the result of the express intention of the legislator. This gives hope that arbitration's popularity will increase in Russia.

Case: *Russian Federation Supreme Court Case № 305-ЭC17-7240 (11 July 2018)*.

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